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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 vs.
15 MARIA DE LOS ANGELES VICENTE,
16 Defendant.

No. 2:07-CR-011(B)-MMM-3

NOTICE OF MOTION AND
MOTION FOR DISCLOSURE OF
BRADY MATERIAL RELEVANT
TO SENTENCING;
MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: July 13, 2009
TIME: 1:15 p.m.
PLACE: Courtroom 780

18 To: The Clerk of the Above-Entitled Court and to the plaintiff, the United
19 States of America, and its Attorneys of Record:

20 PLEASE TAKE NOTICE that on July 13, 2009, at 1:15 p.m., or as soon as
21 counsel may be heard, in the courtroom of the Honorable Margaret M. Morrow,
22 United States District Judge, Defendant Maria de Los Angeles Vicente, by and
23 through her attorney of record, Jeff Price, will request of this Court an order that
24 the government (1) disclose all information in its possession and control which is
25 material and favorable to the defendant at sentencing, including information that
26 could be used to impeach witnesses whose allegations are included in the
27 presentence report and also including, but not limited to, information about the
28 current benefits that Flor Morales Sanchez and all of the other illegal alien

1 witnesses who testified in the trial in this case are receiving or in the process of
2 receiving, (2) disclose copies of all requests made by the United States Attorney's
3 Office and Department of Justice or any law enforcement agency for telephone
4 records, including copies of recordings of telephone conversations, pertaining to
5 calls made by (i) Maria de Los Angeles Vicente, (ii) Mirna Vasquez Valenzuela,
6 (iii) Armando Vicente, (iv) Gladys Vasquez Valenzuela, and (v) Flor Morales
7 Sanchez while incarcerated from December 20, 2006, through February 11, 2009,
8 (3) disclose pen register information for any telephone used by defendant Maria de
9 Los Angeles Vicente in Los Angeles Metropolitan Detention Center [MDC] from
10 January 2007 through August 2007, (4) disclose copies of recordings of all jail
11 telephone calls made by Flor Morales Sanchez and Juan Manuel Montez Velazco,
12 (5) disclose copies of the list or lists of approved telephone numbers associated
13 with defendant Maria de Los Angeles Vicente, Reg. No. 44389-112, maintained
14 with her MDC counselor for the period January 1, 2007, through August 31, 2007
15 (i.e., the list of telephone numbers that Ms. Vicente was permitted to dial when she
16 was an inmate at MDC during the specified period according to BOP inmate
17 telephone list procedures set forth in 28 C.F.R. 540.101 and BOP Policy Statement
18 5264.08), (6) disclose all rough notes of all law enforcement agents, and attorneys
19 for the government, including, but not limited to Caroline Wittcoff, Cheryl
20 O'Connor Murphy, Sarah Heidel, Andrew Kline, Curtis Kin, and Anthony Lewis,
21 of all interviews of all witnesses who testified in the trial in this case, and (7)
22 disclose copies of all rough notes or memoranda of any attorney or investigator
23 pertaining to interviews of witnesses who testified in the trial – including any
24 attorney for any of the victims, that were disclosed to the government.

25 This motion is made pursuant to the due process clause of the fifth and
26 fourteenth amendments to the United States Constitution, as interpreted and
27 applied in *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405
28 U.S. 150 (1972), and *Kyles v. Whitley*, 514 U.S. 419 (1995).

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Memorandum of Points and Authorities

I. Introduction

The probation office disclosed the presentence report in this matter on June 10, 2009. The report recommends an offense level of 53, a criminal history category of I, and a guideline range of Life imprisonment. It contains a number of allegations that the defense contends are inaccurate.

Prior to trial, in about August 2008, defense counsel requested, in writing, disclosure of documents pertaining to events that occurred in October 2006. In response, the government produced nothing. Subsequently, defense counsel filed a motion to dismiss the Indictment. Shortly after the motion to dismiss was electronically filed, the government sent an e-mail to counsel with an attachment containing approximately 60 pages of documents pertaining to the October 2006 “welfare checks”; the documents that had been in the possession, custody or control of the government for more than 20 months, which were disclosed a few weeks prior to the trial, contained exculpatory statements by Minor Female No. 4 and other exculpatory information.¹ The government also withheld boxes of information, including approximately 18 cell phones, an optical disc containing a forensic analysis of the cell phones, a hard drive from a computer that had been used by at least one of the victims – Minor Female #4, and, *inter alia*, numerous photographs, notebooks and other documents until May 2008 or thereafter, which contained exculpatory evidence, including, but not limited to, a cell phone photograph (extracted by an expert witness retained by Ms. Vicente) of a cake that

¹ The defendant is aware that the Court issued an opinion on the topic of the documents that were belatedly disclosed by the government in which the documents may not have been found to have been exculpatory, but the defense maintains that the documents were exculpatory.

1 was unadorned with candles, which impeached the statements made and testimony
2 given by several of the victims.

3 In the case of former Senator Ted Stevens, Attorney General Eric Holder
4 determined that prosecutors had improperly withheld prosecutors' notes that would
5 have aided in Stevens' defense. On April 14, 2009, Attorney General Holder
6 initiated comprehensive steps to enhance the Justice Department's compliance with
7 rules that require the government to turn over evidence to the defense in criminal
8 cases. Attorney General Holder initiated supplemental training for federal
9 prosecutors throughout the Department on their discovery obligations in criminal
10 cases.

11 In April 2009 the Department of Justice released new Freedom of
12 Information Act [FOIA] Guidelines that direct all executive branch departments
13 and agencies to apply a presumption of openness when administering the FOIA.
14 The new Guidelines, announced in a memo to heads of executive departments,
15 build on principles of openness and rescind the guidelines issued by the previous
16 administration.

17 During the trial the government called admitted perpetrator, codefendant and
18 cooperator Flor Morales Sanchez as a witness in its case-in-chief to testify against
19 Ms. Vicente. Despite the fact that victims Minor Female #4 (who is related to
20 Morales Sanchez) and Jane Doe #7 testified that Morales Sanchez recruited them,
21 the government elicited testimony from Morales Sanchez that Ms. Vicente directed
22 Morales Sanchez in her recruitment actions, Reporter's Transcript of Proceedings
23 [RT], January 16, 2009, p. 1429, that Morales Sanchez was afraid of Ms. Vicente,
24 RT January 20, 2009, pp. 1483, 1484, and that Ms. Vicente used force and fear
25 against her, Minor Female #4 and, *inter alia*, Jane Doe #7. Morales Sanchez also
26 testified – contrary to the testimony of the victims themselves and her own
27 statements at her initial proffer session – that Ms. Vicente hit the girls. RT January
28 20, 2009, p. 1542. In cross-examination Morales Sanchez was questioned about a

1 lengthy interview she voluntarily gave to Alfredo Rasch while she was living in
2 Los Angeles in 2007 before she was arrested in connection with this case in
3 August 2007. Most of the statements Morales Sanchez made in the interview about
4 Ms. Vicente were unequivocally exculpatory. During cross-examination and in
5 redirect testimony, however, Morales Sanchez repeatedly disavowed the
6 statements she made in the recorded interview and even testified in response to a
7 leading question by the prosecution that she did not know the interview was being
8 recorded, despite the recording itself, which contains the clear and unequivocal
9 acknowledgement by Morales Sanchez that the interview was being recorded.
10 Morales Sanchez also claimed that she made statements favorable to Ms. Vicente
11 in the interview because she was afraid of Ms. Vicente. Finally, during redirect
12 examination, Morales Sanchez even testified that Ms. Vicente called her on her
13 cell phone (she later testified that Ms. Vicente called her at her residence) and told
14 her to talk to Mirna's investigator and to say nice things to him.

15 Additionally, the principal witnesses who testified against Ms. Vicente,
16 Minor Female #4 and Jane Doe #7, were thoroughly impeached by numerous prior
17 inconsistent statements that they had made in numerous interviews with law
18 enforcement agents and Assistant United States Attorneys, in most of which they
19 were also accompanied by their own attorney. In one interview, during which she
20 was accompanied by at least one of her own attorneys, Minor Female #4 proceeded
21 to spin a tale about traveling to the United States with Jane Doe #7 that was a
22 complete and rather intricate fabrication. During a fair portion of cross-
23 examination Minor Female #4 testified that she did not remember the many
24 contradictory statements she had made. It seems, given the state of the testimony of
25 these and other witnesses, that during the many interviews of Minor Female #4,
26 Jane Doe #7 and the many other witnesses who testified in the trial, the law
27 enforcement agents and AUSAs Wittcoff, Murphy, Heidel, Kline, Kin and Lewis
28 took notes that contain information that was not disclosed to the defense and that

1 reveal contradictions and other impeaching information that would constitute
2 exculpatory evidence.

3 The telephone and other records that are requested will reveal whether there
4 was a telephone call between Ms. Vicente and Flor Morales Sanchez; the defense
5 is confident that such records will reveal that no such conversation ever took place
6 between Ms. Vicente and Flor Morales Sanchez, and that the story concocted in
7 court, which took the form of the testimony of Morales Sanchez, was a pure
8 fabrication designed to undermine exculpatory statements that Morales Sanchez
9 had made to an investigator.

10 The BOP inmate telephone lists will reveal that Morales Sanchez's cell
11 phone number was not even on the approved list of telephone numbers associated
12 with Ms. Vicente and that Ms. Vicente could not have called Morales Sanchez on
13 her cell phone as Morales Sanchez testified.

14 Defense counsel delivered a letter dated June 1, 2009, which included most
15 of what is requested in this motion, to each of the government attorneys involved
16 in prosecuting this case (AUSAs Caroline Wittcoff, Cheryl O'Connor Murphy,
17 Sarah Heidel, Andrew Kline, Curtis Kin and Anthony Lewis) a copy of which is
18 attached to the accompanying Declaration of Counsel. No response was received.

19
20 II. Argument

21
22 A. Principles Represented in *Brady* and its Progeny

23
24 In analyzing the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), it is
25 appropriate to begin with the *Brady* opinion itself. It states its scope in at least two
26 separate paragraphs. In one, it states: "[T]he suppression by the prosecution of
27 evidence favorable to an accused upon request violates due process when the
28 evidence is material either to guilt or to punishment, irrespective of the good faith

1 or the bad faith of the prosecution.” *Brady*, 373 U.S. at 87 (emphasis added). Soon
2 after, it states the rule with the same breadth: “A prosecution that withholds
3 evidence on demand of an accused which, if made available will tend to exculpate
4 or reduce the penalty helps shape a trial that bears heavily on the defendant.” *Id.* at
5 87-88.

6 *Brady* itself was a sentencing case. *See United States v. Feeney*, 501 F.Supp.
7 1324, 1334 (D.Colo. 1980) (“[i]t is deserving of comment that *Brady v. Maryland*
8 dealt only with punishment”). While the defendant in *Brady* was challenging both
9 his conviction and his death sentence, the Supreme Court found the withheld
10 evidence material only to sentencing and held it proper for the court of appeals to
11 affirm the conviction but vacate the sentence. *See Brady*, 373 U.S. at 88, 90-91.
12 This makes sense only if the duty recognized in *Brady* was one that extended to
13 sentencing as well as to trial.

14 The applicability of *Brady* at sentencing also has been recognized by lower
15 courts, including the Ninth Circuit. In *United States v. Plunk*, 153 F.3d 1011 (9th
16 Cir. 1998), the defendant raised a *Brady* claim based on undisclosed impeachment
17 information in the possession of a cooperating witness’s attorney. *See Plunk*, 153
18 F.3d at 1028. The court acknowledged that “[p]ursuant to *Brady*, ‘the suppression
19 by the prosecution of evidence favorable to an accused upon request violates due
20 process where the evidence is material to guilt or punishment, irrespective of the
21 good faith or bad faith of the prosecution.’” *Plunk*, 153 F.3d at 1028. The court
22 rejected the defendant’s claim not because *Brady* did not apply but because “the
23 prosecution did not possess or control the requested information.” *Plunk*, 153 F.3d
24 at 1028.

25 The Ninth Circuit applied *Brady* to sentencing in *United States v. Mikaelian*,
26 168 F.3d 380 (1999). It quoted the same language from *Brady* that it had quoted in
27 *Plunk* and cited *Plunk* as “applying *Brady* at sentencing.” *Mikaelian*, 168 F.3d at
28

1 388-89. It rejected the defendant's claim only because he "[d]id not allege that the
2 government ha[d] withheld any evidence favorable to him." *Id.* at 389.

3 Cases in which courts have vacated sentences based on *Brady* violations
4 include *United States v. Weintraub*, 871 F.2d 1257 (5th Cir. 1989) and *United*
5 *States v. Severson*, 3 F.3d 1005 (7th Cir. 1993). In *Weintraub*, the court vacated a
6 sentence where the government withheld evidence impeaching trial testimony the
7 lower court had relied upon in determining drug quantity at sentencing. *See*
8 *Weintraub*, 871 F.2d at 1265. In *Severson*, the court vacated a sentence and
9 remanded for reconsideration of rulings on the obstruction of justice and
10 acceptance of responsibility adjustments under the Sentencing Guidelines based on
11 *Brady* material disclosed by a prosecutor just prior to oral argument. *See Severson*,
12 3 F.3d at 1012-13.

13 The applicability of *Brady* at sentencing was discussed in some depth in
14 *United States v. Feeney*, 501 F.Supp. 1324 (D.Colo. 1980), in which the court
15 stated:

16 Rule 16 has to do with trials while *Brady v. Maryland* is two-pronged. Its
17 declaration of a constitutional right to disclosure of exculpatory material
18 says there is mandatory disclosure of anything which bears on guilt or on
19 punishment

20 *Feeney, supra*, 501 F.Supp. at 1334. As pointed out in *United States v. Severson*:

21 Due process also requires a defendant receive a fair sentencing hearing. The
22 amount of "process" required in the sentencing hearing is not as great as that
23 required in the trial itself. Nonetheless, *Brady* applies to sentencing.

24 *Severson*, 3 F.3d at 1013 [citation omitted].

25 In *Giglio v. United States*, 405 U.S. 150 (1972), the Supreme Court held:

26 As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342,
27 79 L.Ed. 791 (1935), this Court made clear that deliberate deception of a
28 court and jurors by the presentation of known false evidence is incompatible
with "rudimentary demands of justice." This was reaffirmed in *Pyle v.*

1 *Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942). In *Napue v.*
 2 *Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), we said, “(t)he
 3 same result obtains when the State, although not soliciting false evidence,
 4 allows it to go uncorrected when it appears.” *Id.*, at 269, 79 S.Ct., at 1177.
 5 Thereafter *Brady v. Maryland*, 373 U.S., at 87, 83 S.Ct., at 1197, held that
 6 suppression of material evidence justifies a new trial “irrespective of the
 7 good faith or bad faith of the prosecution.” When the “reliability of a given
 8 witness may well be determinative of guilt or innocence,” nondisclosure of
 9 evidence affecting credibility falls within this general rule. *Napue, supra*, at
 10 269, 79 S.Ct., at 1177. . . . A new trial is required if “the false testimony
 11 could . . . in any reasonable likelihood have affected the judgment of the jury
 12 . . .” *Napue, supra*, at 271, 79 S.Ct., at 1178.

13 *Id.* at 153-154 [citation omitted].

14 The Supreme Court explained in *Strickler v. Greene*, 527 U.S. 263 (1999)
 15 that the Government’s duty to disclose derives from
 16 the special role played by the American prosecutor in the search for truth in
 17 criminal trials. Within the federal system, for example, the Court has said
 18 that the United States Attorney is “the representative not of an ordinary party
 19 to a controversy, but of a sovereignty whose obligation to govern impartially
 20 is as compelling as its obligation to govern at all; and whose interest,
 21 therefore, in a criminal prosecution is not that it shall win a case, but that
 22 justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88 (1935).

23 *Strickler*, 527 U.S. at 281.

24 In *United States v. Rodriguez*, 496 F.3d 221 (2^d Cir. 2007), the United States
 25 Court of Appeals for the Second Circuit stated:

26 *Brady* information must be disclosed, furthermore, in a manner that gives the
 27 defendant a reasonable opportunity either to use the evidence in the trial or
 28 to use the information to obtain evidence for use in the trial. Thus, the
 Government must make disclosures in sufficient time that the defendant will
 have a reasonable opportunity to act upon the information efficaciously. *See*
Leka, 257 F.3d at 100 (noting that *Brady* disclosures must be timed so that

1 the defense has a sufficient opportunity to use them); *id.* at 101 (“When . . . a
 2 disclosure is first made on the eve of trial, or when trial is under way, the
 3 opportunity to use it may be impaired.”); *see also DiSimone v. Phillips*, 461
 4 F.3d 181, 197 (2d Cir.2006) (“The more a piece of evidence is valuable and
 5 rich with potential leads, the less likely it will be that late disclosure
 6 provides the defense an ‘opportunity for use.’” (quoting *Leka*, 257 F.3d at
 7 103)). Similarly, disclosures must be sufficiently specific and complete to be
 8 useful. *See Leka*, 257 F.3d at 103 (finding *Brady* not satisfied where
 9 Government did not disclose details of potential witness’s knowledge,
 10 because defendant was left to gamble on what witness would say).
 11 *Id.* at 226. Also, “[t]he obligation to disclose information covered by the *Brady* and
 12 *Giglio* rules exists without regard to whether that information has been recorded in
 13 tangible form.” *Id.* Since it has been made clear that a defendant has the “right to
 14 have the jury find the existence of “‘any particular fact’” that the law makes
 15 essential to his punishment,” *see, e.g., United States v. Booker*, 543 U.S. 220, 232
 16 (2005), the importance of the full disclosure of exculpatory evidence is heightened.

18 B. Relationship of Categories of Information Requested to This Case

20 1. Any Information that is Material and Favorable to the Defendant

22 Ms. Vicente requests disclosure of any information within the possession or
 23 control of the government that is material and favorable to her in the context of
 24 sentencing. This request corresponds to the duty of the prosecution to learn of
 25 favorable evidence known to the prosecution team. *See Kyles v. Whitley*, 514 U.S.
 26 419, 437-38 (1995) (“This in turn means that the individual prosecutor has a duty
 27 to learn of any favorable evidence known to the others acting on the government’s
 28 behalf in the case, including the police. But whether the prosecutor succeeds or

1 fails in meeting this obligation (whether, that is, a failure to disclose is in good
2 faith or bad faith, see *Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-1197), the
3 prosecution's responsibility for failing to disclose known, favorable evidence
4 rising to a material level of importance is inescapable."").

5 Ms. Vicente also requests information about the current benefits that Flor
6 Morales Sanchez and all of the other illegal alien witnesses who testified in the
7 trial in this case are receiving or in the process of receiving. On information and
8 belief, Morales Sanchez is attempting to obtain permission, with the help and
9 intervention of the prosecution in this case, from the Department of Homeland
10 Security to remain in the United States on a permanent basis. Given the state of the
11 disclosures prior to and during trial it was unknown during the trial what the exact
12 status of many of the victims or other illegal alien witnesses was and what
13 immigration benefits they were to receive. Ms. Vicente requests complete
14 disclosure of all of the benefits that Morales Sanchez, the victims and the other
15 illegal alien witnesses are receiving or are in the process of receiving. This
16 information is relevant to impeachment of their testimony in addition to any
17 motivations they had for testifying and for making statements during the
18 Presentence Investigation.

19
20 2. Telephone Records and Recordings
21

22 The government called two cooperator witnesses Flor Morales Sanchez and
23 Juan Manuel Montez Velazco in its case in chief. Both witnesses were
24 incarcerated. Morales Sanchez was a codefendant in this case, had changed her
25 plea to guilty and was awaiting sentencing. Montez Velasco was a defendant in
26 another criminal case in this district, had entered a guilty plea and was awaiting
27 sentencing. On information and belief, Montez Velasco had volunteered to be a
28

1 witness against the defendants. Both witnesses had unavoidable incentives to
2 provide testimony favorable to the prosecution.

3 In this case the government used its key witness, Flor Morales Sanchez, an
4 admitted perpetrator and a codefendant, to elicit evidence from an insider
5 perspective to reinforce its case against Ms. Vicente. The PSR recommends that a
6 multi-level enhancement for role in the offense be applied in determining the
7 guidelines level for Ms. Vicente. Despite the fact that when she was unencumbered
8 by a grand jury indictment charging her with crimes carrying a potential life
9 sentence and living on her own in Los Angeles, she was interviewed by a defense
10 investigator and made numerous statements exculpating Ms. Vicente, the trial
11 testimony of the Flor Morales Sanchez, who pleaded guilty as a cooperator and
12 was seeking benefits from the government, is integral to the determination that this
13 leader-supervisor role in the offense enhancement be applied to Ms. Vicente. The
14 government disclosed several reports of interviews of Morales Sanchez to the
15 defense prior to and during trial. None of the reports, which spanned the period
16 from August 2007 through January 2009, contained any information about Ms.
17 Vicente contacting Morales Sanchez and importuning her to speak with Alfredo
18 Rasch, the investigator for Mirna Vasquez Valenzuela. However, apparently,
19 shortly prior to or during the trial the government learned that Mr. Rasch had
20 interviewed Morales Sanchez in 2007. The government then elicited testimony
21 from Morales Sanchez that Ms. Vicente had called her in 2007 and had told her to
22 talk to Mirna's investigator and to give him favorable information. In response to
23 this fantastic testimony the defense immediately subpoenaed records of Ms.
24 Vicente's telephone calls while she was incarcerated at MDC in 2007. No records
25 were produced. The government called a BOP witness who testified that
26 recordings of prison telephone calls are purged after 6 months. What remains
27 unknown is whether the government ever requested copies of recordings of Ms.
28 Vicente's telephone calls during the January 2007 through August 2007 period.

1 Morales Sanchez, whose son, fathered by Ms. Vicente's brother, also a
2 defendant in this case, was born on March 11, 2007, had been interviewed by
3 Alfredo Rasch, a defense investigator for co-defendant Mirna Vasquez Valenzuela
4 who was working with the defense team. Morales Sanchez made numerous
5 statements during the lengthy interview, which was recorded and transcribed, that
6 exculpated Ms. Vicente. However, at trial, the defense was ambushed with
7 testimony by Morales Sanchez that Ms. Vicente had called her on her cell phone,
8 and that Ms. Vicente had pressured her to talk to Mr. Rasch and to – in essence –
9 provide false information to him for the benefit of Ms. Vicente. In response to an
10 open-ended question posed by AUSA Cheryl Murphy Morales Sanchez testified
11 that Ms. Vicente called Morales Sanchez on Morales Sanchez's cell phone. AUSA
12 Murphy objected to the response given by her own witness. She was then offered
13 the opportunity to withdraw the question, which she availed herself of. That the
14 question was withdrawn does not in the least affect the exculpatory nature of the
15 evidence. The PSR asserts that Ms. Vicente and Mirna Vasquez Valenzuela
16 intimidated Morales Sanchez, by, *inter alia*, attempting to coerce her into
17 withdrawing her guilty plea and accordingly recommends a 2-level enhancement
18 under U.S.S.G. §3C1.1. *See* PSR ¶¶ 90-92. Telephone records, including the BOP
19 list of inmate approved telephone numbers for Ms. Vicente and recordings of
20 telephone calls made by Ms. Vicente, will reveal that Ms. Vicente never called
21 Morales Sanchez on her cell phone and will reveal that the testimony of Morales
22 Sanchez vis-à-vis the alleged telephone call wherein Ms. Vicente is alleged to have
23 importuned Morales Sanchez to talk to Alfredo Rasch was false. This is
24 exculpatory evidence, which the defense is entitled to.

25 Given the willingness of Morales Sanchez to testify falsely, it is likely that
26 she made statements during telephone conversations that would corroborate the
27 theory that the underlying theme of her testimony was false, which would
28 constitute additional exculpatory evidence. Similarly, any statements made by

1 Montez Velasco in recorded telephone conversations that show that he was
2 fabricating facts would constitute exculpatory evidence. If the evidence is there, it
3 must be disclosed. Ms. Vicente thus requests the telephone records related to her
4 own telephone calls, as well as those related to telephone calls to which Morales
5 Sanchez was a party and requests copies of all recordings of telephone calls made
6 by the two cooperating witnesses when they were incarcerated. Records, i.e.,
7 recordings, of telephone calls made by Gladys Vasquez Valenzuela and Mirna
8 Vasquez Valenzuela are also requested for the purpose of obtaining recordings of
9 any calls between them and Morales Sanchez. Recordings of calls made by Luis
10 Vicente Vasquez are requested because it is known that he spoke regularly with
11 Morales Sanchez from the time of his arrest until the trial. On information and
12 belief, recordings of those calls will contain exculpatory evidence in the form of
13 statements of Morales Sanchez that are directly contradictory to her trial testimony
14 and statements made in proffer sessions, which will impeach the testimony of Flor
15 Morales Sanchez.

16 In a recent prosecution in the Central District of California the issue of
17 statements made in recorded telephone calls made by a government cooperator was
18 at issue. On June 1, 2009, in *United States v. Torres*, No. 2:06-CR-656-SVW,
19 Judge Wilson stated:

20 And the court also finds that the recorded telephone calls [involving a
21 government cooperator] – prison calls that the defense used at trial were
22 *Brady* material, and that while the defense unearthed them through its
23 efforts, those phone calls should have been unearthed by the government.
24 They were *Brady* material, and the government was responsible for
25 uncovering them

26 Reporter's Transcript of Proceedings [RT], June 1, 2009, Case No. CR-06-656(A)-
27 SVW, pp. 5-6, a true and correct copy of which is attached to the accompanying
28 Declaration of Counsel, marked Exhibit C.

1 Judge Wilson also inquired into the availability of prison telephone call
2 recordings. AUSA Stephen Wolfe acknowledged that the call recordings are stored
3 in a digital format and stated that “[i]f they have not been overwritten, they exist, if
4 at all, in hard drives in one or more places that would require forensic computer
5 analysis to retrieve.” RT June 1, 2009, pp. 9-10.

6
7 3. Rough Notes Memorializing Statements of Witnesses
8

9 Rough notes taken by an investigator, law enforcement agent or prosecutor
10 that memorialize statements made by witnesses that are inherently exculpatory or
11 that “could lead to admissible evidence or would be an effective tool in
12 disciplining witnesses during cross-examination by refreshment of recollection or
13 otherwise” must be disclosed under *Brady*. See *United States v. Triumph Capital*
14 *Group, Inc.*, 544 F.3d 149, 162-163 (2^d Cir. 2008). In *Triumph Capital Group*, the
15 notes at issue were notes “taken at a meeting where Silvester’s attorney
16 approached the government on Silvester’s behalf to relate Silvester’s account of his
17 criminal activity in an attempt to convince the government to offer him a
18 cooperation agreement.” *Id.* at 163.

19 Under Fed. R. Evid. 502, any notes or memoranda that were disclosed by
20 any attorney or investigator for the victims in this case to the government should
21 be disclosed to the defense. See *United States v. Treacy*, 2009 WL 812033, *2
22 (S.D.N.Y. 2009). Thus, any notes or memoranda of any of the attorneys for any of
23 the victims in this case who testified at trial, which were disclosed to the
24 government, must be disclosed to the defense.

25 The testimony of Morales Sanchez was false. Morales Sanchez initially
26 testified – in response to a question posed by AUSA Cheryl Murphy – that Ms.
27 Vicente called Morales Sanchez on Morales Sanchez’s cell phone. Reporter’s
28 Transcript of Proceedings, January 20, 2009, p. 1512, a true and correct copy of

1 which is attached to the accompanying Declaration of Counsel, marked Exhibit B.
2 AUSA Cheryl Murphy immediately objected to the answer to her own question,
3 arguing that the response was “nonresponsive.” She was then allowed to have the
4 question stricken. It is highly probable that the reason Ms. Murphy objected to the
5 answer to her own question was that she knew that Morales Sanchez lied because
6 she knew that Ms. Vicente could not have called Morales Sanchez on her cell
7 phone. The BOP inmate telephone lists will reveal conclusively that defendant
8 Vicente never called Morales Sanchez on her cell phone because the inmate
9 telephone lists will show that Morales Sanchez’s cell phone telephone number did
10 not appear on Ms. Vicente’s list of approved telephone numbers. Recordings of
11 telephone calls made by Ms. Vicente will reveal that Morales Sanchez testified
12 falsely on January 20, 2009, when she testified that Ms. Vicente urged her to talk
13 to Alfredo Rasch; the recordings will reveal that no such conversation ever took
14 place and that the testimony of Morales Sanchez was fabricated in order to destroy
15 the probativeness of the statements that Morales Sanchez made to Rasch in the
16 recorded interview. If there is any way that the recordings of Ms. Vicente’s
17 telephone calls from 2007 can be retrieved, they should be retrieved.

18 Any notes of any law enforcement agent, or any Assistant United States
19 Attorney taken during any interview of Morales Sanchez – including any notes
20 taken by any of the above mentioned persons in proffer sessions or any notes taken
21 by any of the above mentioned persons of conversations with Morales Sanchez’s
22 attorney – should be disclosed as they probably contain exculpatory information
23 revealing different stories Morales Sanchez has told, statements she has made that
24 are inconsistent with her trial testimony and evidence of fabrication of evidence on
25 the part of Morales Sanchez. These notes should also be disclosed to unveil any
26 statements Morales Sanchez made about the Rasch interview or any statements she
27 made in which she was untruthful and lied about having been interviewed by the
28 defense.

1 The refutation of the testimony of Morales Sanchez would be important to
2 undercut the argument made by the government in the PSR that Ms. Vicente
3 engaged in intimidation of Morales Sanchez, attempted to dissuade her from
4 cooperating with the government and attempted to convince her to withdraw her
5 guilty plea.

6 Despite undergoing numerous interviews with law enforcement agents and
7 government attorneys and in the protective presence of their own attorneys, the
8 victims in this case told numerous contradictory stories and at trial were evidently
9 testifying by means of cues in line with a script – as was demonstrated on
10 numerous occasions during the trial when they repeatedly stated “I do not
11 remember” when confronted by glaring inconsistencies in their prior statements
12 and even sometimes – notably, in the case of Minor Female #4 – denying that she
13 had made statements that had appeared in the official reports of law enforcement
14 agencies.

15
16 III. Conclusion

17
18 Thus, for the reasons stated here, the Court should order the government to
19 provide all information material and favorable to Ms. Vicente for sentencing,
20 which is known or reasonably should be known to the prosecutors and/or the
21 government agencies involved in this case. This should include (1) all information
22 in its possession and control which is material and favorable to the defendant at
23 sentencing, including information that could be used to impeach witnesses whose
24 allegations are included in the presentence report, and also including, but not
25 limited to, information about the current benefits that Flor Morales Sanchez and all
26 of the other illegal alien witnesses who testified in the trial in this case are
27 receiving or in the process of receiving, (2) copies of all requests made by the
28 United States Attorney’s Office and Department of Justice or any law enforcement

1 agency for telephone records, including copies of recordings of telephone
 2 conversations, pertaining to calls made by or to which the following persons were
 3 a participant (i) Maria de Los Angeles Vicente, (ii) Mirna Vasquez Valenzuela,
 4 (iii) Armando Vicente, (iv) Gladys Vasquez Valenzuela and (v) Flor Morales
 5 Sanchez while incarcerated from December 20, 2006, through February 11, 2009,
 6 (3) pen register information for any telephone used by defendant Maria de Los
 7 Angeles Vicente in Los Angeles Metropolitan Detention Center [MDC] from
 8 January 2007 through August 2007, (4) copies of recordings of all jail telephone
 9 calls made by Flor Morales Sanchez and Juan Manuel Montez Velazco, (5) copies
 10 of the list or lists of approved telephone numbers associated with defendant Maria
 11 de Los Angeles Vicente, Reg. No. 44389-112, maintained with her MDC counselor
 12 for the period January 1, 2007, though August 31, 2007, (6) all rough notes of all
 13 law enforcement agents, and attorneys for the government, including, but not
 14 limited to Caroline Wittcoff, Cheryl O'Connor Murphy, Sarah Heidel, Andrew
 15 Kline, Curtis Kin, and Anthony Lewis, of all interviews of all witnesses who
 16 testified in the trial in this case, (7) copies of all rough notes of any attorney or
 17 investigator, which were disclosed to the government, that were taken during
 18 interviews of witnesses or that represent statements made by witnesses who
 19 testified at the trial in this case, and (8) any other *Brady* material.

20 Respectfully submitted,

21 Dated: June 21st, 2009

/s/ JEFF PRICE

22 JEFF PRICE

23 Attorney for Defendant Maria Vicente
 24
 25
 26
 27
 28

PROOF OF SERVICE

I, Jeff Price, declare that I am employed in the county of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is 1335 4th Street, Santa Monica, California 90401.

On June 21, 2009, I served the foregoing documents, described as MOTION FOR DISCLOSURE OF BRADY MATERIAL RELEVANT TO SENTENCING [*United States v. Valenzuela et al*, 07-CR-11-MMM-3] on counsel for the interested parties in this action:

☒ by placing the true copies thereof:

See below and Attachment

☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ by mail as follows: I am "readily familiar" with the business practice at my place of business of collection and processing of correspondence for mailing with the United States Postal Service. Under that practice correspondence so collected and processed is deposited with the United States Postal Service that same day with postage fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated by declaration or affidavit.

☒ by e-mail as follows: I delivered the documents by e-mail to counsel for the following parties: *See attachment.*

Executed on June 21, 2009, at Santa Monica, California.

☒ [Federal] I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service is made.

/s/
Jeff Price

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